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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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IN AND FOR THE COUNTY OF LOS ANGELES

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14 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
not-for-profit religious)
15 corporation;)

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Plaintiffs,)

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vs.)

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GERALD ARMSTRONG; DOES 1)
through 25, inclusive,)

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Defendants.)

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No. BC 052395

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO STRIKE SURPLUSAGE,
IRRELEVANT, AND IMPROPER
MATERIAL FROM VERIFIED
COMPLAINT FOR DAMAGES AND FOR
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF FOR BREACH OF
CONTRACT

Date: June 11, 1992

Time: 8:30 a.m.

Dept: 30

Motion Cut Off: Not Set

Discovery Cut Off: Not Set

Trial Date: None

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I. STATEMENT OF FACTS

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The complaint for breach of contract in this case is
predicated upon a settlement agreement that was executed on
December 6, 1986. (Cmplt. at pp. 1:23-2:9; Request for Judicial

1 Notice ("RJN"), Ex. A at p. 16) ^{1/} In pertinent part, Paragraph
2 9 of the agreement states:

3 This Mutual Release of All Claims and Settlement Agreement
4 contains the entire agreement between the parties hereto, and
5 the terms of this Agreement are contractual and not a mere
6 recital. . . No other prior or contemporaneous agreements,
7 oral or written, respecting such matters, which are not
8 specifically incorporated herein shall be deemed to in any
9 way exist or bind any of the parties hereto.

7 (Id. at pp. 12-13)

8 Paragraph 7I of the agreement states in its entirety:

9 The parties hereto agree that in the event of any future
10 litigation between Plaintiff and any of the organizations,
11 individuals or entities listed in Paragraph 1 above, that any
12 past action or activity, either alleged in this lawsuit or
13 activity similar in fact to the evidence that was developed
14 during the course of this lawsuit, will not be used by either
15 party against the other in any future litigation. In other
16 words, the "slate" is wiped clean concerning past actions by
17 any party.

14 (Id. at p. 11)

15 **II. THE LANGUAGE OF THE COMPLAINT IDENTIFIED IN THE NOTICE**
16 **MUST BE STRICKEN BECAUSE IT IS IRRELEVANT, CONTRARY TO**
17 **THE TERMS OF THE AGREEMENT WHICH SCIENTOLOGY SEEKS TO**
18 **ENFORCE, AND INFLAMMATORY**

18 A motion to strike may be served in conjunction with a
19 demurrer, (C.C.P. § 435), and shall be heard concurrently
20 therewith. California Rules of Court 329.

21 Based upon the fact that plaintiff's complaint is a simple
22 breach of contract action, and upon the specific language of the
23 contractual instrument upon which plaintiff relies to prosecute
24 this lawsuit, it is clear that all references in the complaint -
25 identified in the notice of this motion to strike - to any

26 ¹ In light of the fact that the herein motion to strike is
27 filed concurrently with a demurrer, this motion will rely on the
28 request for judicial notice filed in connection with the demurrer.
Thus all citations herein designated RJN made herein refer to said
request for judicial notice.

1 activity alleged to have perpetrated by Armstrong which predate
2 December 6, 1986 are irrelevant to claims of breach of the
3 agreement.

4 Such material is irrelevant on another ground because
5 Paragraph 9 of the agreement states that the agreement is the
6 entire understanding of the parties.

7 The grounds for a motion to strike may include irrelevant,
8 false or improper matter. (C.C.P. § 436 (a); American
9 Aeronautics Corp. v. Grand Central Aircraft Co. (1957) 155
10 Cal.App.2d 69, 84, 317 P.2d 694, 704) Irrelevant material
11 includes allegations that are not essential to the claim of the
12 complaint. (C.C.P. § 431.10 (b)) ^{2/}

13 Indeed, while Scientology seeks to enforce the agreement on
14 one hand, it speaks out of the other side of its corporate mouth
15 when the very allegations of its complaint disregard the
16 provisions of paragraph 7I of the precise agreement it seeks to
17 enforce. Such pleading is contradictory and should be stricken.
18 Since the material in the paragraphs that are the subject of this
19 motion is precluded by the terms set forth in Paragraph 7I of the
20 agreement, it is not filed in conformity with the laws of
21 California because Scientology cannot have it both ways. (C.C.P.
22 § 436 (b) see Tostevin v. Douglas (1958) 160 Cal.App.2d 321, 330,
23 325 P.2d 130, 136; Neal v. Bank of America (1949) 93 Cal.App.2d
24 678, 209 P.2d 825)

25 Moreover, both the language and the paragraphs that are the
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27 ² In addition to the language set forth on the face of the
28 pleadings, a motion to strike may rely on matters which are the
proper subject of judicial notice. (C.C.P. § 437)

1 subject of this motion is language that should be stricken because
2 it is inflammatory and not the subject of any claim for punitive
3 damages. (See Bartling v. Glendale Adventist Medical Center
4 (1986) 184 Cal.App.3d 961, 970, 229 Cal.Rptr. 360, 364)

5 **CONCLUSION**

6 Based upon the arguments set forth above, it is submitted
7 that defendant ARMSTRONG's motion to strike should be granted.

8 DATED: May 13, 1992

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10 By: FS
11 FORD GREENE and PAUL MORANTZ
12 Attorneys for Defendant
13 GERALD ARMSTRONG
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